UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-7605

UNITED STATES OF AMERICA,

        Plaintiff – Appellee,

    v.

KALVIN MARSHALL,

        Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, District Judge. (3:02-cr-00225-HEH-2; 3:12-cv-00480-HEH)

Submitted: January 17, 2013   Decided: January 22, 2013

Before GREGORY, SHEDD, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Kalvin Marshall, Appellant Pro Se. David Thomas Maguire, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kalvin Marshall seeks to appeal the district court's order construing his Fed. R. Civ. P. 60(b) motion as a 28 U.S.C.A. § 2255 (West Supp. 2012) motion and dismissing it as successive. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2006); Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that the district court's assessment of his constitutional claims is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir.2001). We have independently reviewed the record and conclude that Marshall has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials

2

before this court and argument would not aid the decisional process.

DISMISSED